Filed 7/28/16 In re A.J. CA1/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.J. et al., Persons Coming Under the Juvenile Court Law.	
SOLANO COUNTY HEALTH AND SOCIAL SERVICES DEPARTMENT, Plaintiff and Respondent, v. A.T., Defendant and Appellant.	A147110 (Solano County Super. Ct. Nos. J43097, J43098)

A.T. (Mother) appeals an order removing her two children, A.J. and M.J., from her custody and allowing her one hour of supervised visitation per week. She asserts the evidence was insufficient to support the removal findings and orders. We dismiss the appeal because the issues are moot.

I. BACKGROUND

In August 2015 the Solano County Department of Health and Human Services (the Department) filed a petition alleging that five-year-old A.J. and two-year-old M.J. were at substantial risk of suffering harm due to A.J. having suffered numerous bruises she reported Mother accidentally inflicted; failure to protect due to Mother's obsessive

compulsive disorder, episodes of passing out and alcohol abuse; and sibling abuse. The Department detained both children.

In October 2015, following a combined jurisdiction and disposition hearing the juvenile court sustained petition allegations under Welfare and Institutions Code section 300, subdivisions (a) and (b) based on A.J.'s injuries and Mother's alcohol abuse, passing out and obsessive compulsive disorder. The sibling abuse allegation was sustained on November 12, 2015. Remaining allegations were found unsupported and dismissed. The court found the children could not safely be returned to Mother's custody or placed with their father, ordered that they remain in their out-of-home placement, and ordered the Department to provide family reunification services. The court continued an existing order granting Mother weekly one-hour supervised visitation, but gave the Department discretion to increase the frequency and length of visits and eliminate the supervision requirement.

Mother filed an appeal in December 2015. Although her notice of appeal refers to all orders made at the jurisdiction/disposition hearing, her arguments on appeal are directed solely to the disposition and visitation orders. On April 21, 2016, following the six-month review hearing, the children were returned to Mother's care with continuing reunification services.[1] An interim hearing was set for July 21,with the notation "possible terminat[ion] of juris[diction]," and an in-home status review was set for October 2016. On July 21 the juvenile court terminated dependency jurisdiction in this matter.[2]

[1] We take judicial notice of the juvenile court's April 21, 2016 orders. (Evid. Code, §§ 452, subd.(d), 459.) The Department's request to augment the record is denied as unnecessary.

[2] We take judicial notice of the July 21 order.

II. DISCUSSION

Mother contends the juvenile court erred when it ordered the children removed from her custody because there was not substantial evidence showing there were no other means of protecting them. She also contends the court abused its discretion when it ordered only weekly, supervised visits. But the court has returned the children to Mother's custody and terminated its jurisdiction, so the issues she raises are moot.

" '[A]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect. . . ." (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.) "When no effective relief can be granted, an appeal is moot and will be dismissed." (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1316.) Here Mother was granted custody of her children, so we cannot grant effective relief from the disposition and visitation orders. Accordingly, her appeal is moot.

Mother asserts her appeal is not moot because the purported errors may affect the outcome of subsequent proceedings. (See *In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) Observing that the court did not set aside the findings that supported the original disposition order, she argues that, if we do not review the order despite its apparent mootness, "it is . . . possible that the lower court will again incorrectly rely on the evidence presented at the dispositional hearing to support a future removal order." Her argument is unpersuasive. As a matter of law, any hypothetical future removal order must be based on Mother's ability to care for A.J. and M.J. *at that time*—not, as Mother speculates, on the circumstances that existed when the children were first removed from her care. (See § 361, subd. (c)(1)-(5).) Moreover, the subsequent finding in April 2016 that Mother's progress warranted returning the children to her puts to rest even the most remote concern that a court might, in some future proceeding, attribute undue

significance to the evidence or findings from the original disposition hearing. Such attenuated speculation does not warrant a departure from the well-established mootness doctrine.

Mother's reliance on *In re Yvonne W.* (2008) 165 Cal.App.4th 1394 does not persuade us otherwise. There, after the child was removed the mother enrolled in a residential treatment program, participated in therapy, tested regularly and had successful visitation. (*Id*. at pp. 1397–1398.) As of the 18–month hearing she continued making good progress, but was unable to find permanent housing and was living at a shelter the agency expressly approved as appropriate. The juvenile court found that return of the child created a substantial risk of detriment based on the child's expressed fear, anxiety and unhappiness about her mother living at a shelter. The court selected "another permanent planned living arrangement" as the child's permanent plan. (*Id*. at p. 1399.)

As here, the child was returned to the mother's custody after the mother appealed. The court of appeal declined to dismiss the appeal as moot because it found the issue it raised, whether the court properly premised a risk of detriment finding on the sole basis of the parent's residence in a shelter previously deemed by the agency to be appropriate, was "of continuing public importance and . . . capable of repetition, yet evading review." (*In re Yvonne W., supra,* 165 Cal.App.4th at p. 1404; see *In re Jody R.* (1990) 218 Cal.App.3d 1615, 1622 ["If an action involves a matter of continuing public interest and the issue is likely to recur, a court may exercise an inherent discretion to resolve that issue, even though an event occurring during its pendency would normally render the matter moot."].) The instant case presents no such issue of continuing public importance. Mother does not ask us to clarify a legal standard that will likely recur in her own case or among other parties, but rather to determine whether the evidence was sufficient in her particular case to warrant the children's initial removal from her care.

And, in contrast to *In re Yvonne, supra,* 165 Cal.App.4th 1394, the facts here give no cause for concern that the juvenile court might base a future removal decision on one erroneous factor. We decline to exercise our discretion to decide the matter.

DISPOSITION

The appeal is dismissed.

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Siggins, J.

We concur:

_____
McGuiness, P.J.

_____
Jenkins, J.